FAMILY LAW UPDATE

BENCH BAR CONFERENCE

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Recent Developments in Virginia Family Law

FAMILY LAW UPDATE

CASES AND STATUTES

MAY, 2022 TO APRIL, 2023

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Domestic Law Update

May 2022 – April 2023

I. Virginia Case Law

A. Procedure and Jurisdiction

i. Arastoo Yazdani v. Soraya Sazegar, Virginia Court of Appeals, 2022 1346214 (December 13, 2022) [Agreement, Attorney Fees]

Appellant did not clearly and unambiguously agree to waive his right to appeal the issue of attorney fees and the award of attorney fees was reasonable, but other arguments raised by appellant were either not raised at the trial level or not supported by statute, case law, or valid legal reasoning. The Court of Appeals affirmed and remanded to the trial court for an award of appellate fees.

Husband and Wife met on an online dating service and married after a short dating period. A year and a half later Wife confronted Husband about communicating with new women on the same dating service whereupon Husband moved out of the marital residence. Wife filed for divorce on desertion grounds.

Husband failed repeatedly to respond to discovery requests, then hired counsel who filed a "flurry" of motions, including seeking to amend his claims to add an allegation that Wife only married him as part of a "green-card sham" and suggesting Wife could be subject to criminal penalties. After the first day of trial the Circuit Court judge encouraged the parties to try to settle the matter. They did reach a settlement that night, and the next morning presented a signed Agreement that resolved everything but reserved attorney fees for determination by the Court. It further specified that the parties "agree[d] to follow the ruling of the Court" as to fees.

After confirming the parties were prepared to proceed on fees that day, the court awarded Wife fees finding that Husband's repeated discovery failures and insulting "green card fraud" allegations late in the proceedings had unnecessarily delayed resolution of the divorce. Husband noted an appeal only on the issue of fees.

Wife argued on appeal that Husband waived his right to appeal fees in the parties' Agreement, which provided that the parties would "follow" the Court's fee ruling. The Court of Appeals held that this was not a "clear and unambiguous" waiver as such a waiver must be expressly stated.

The Court of Appeals further held that Husband had waived certain of his appellate arguments by failing to present them to the Circuit Court and/or failing to provide legal authority for same. The panel also held that the award of fees was reasonable under all circumstances, noting that the Circuit Court found that Husband had resisted legitimate discovery requests and only provided some of the required documents in response to the Court's compel order. Writing for the panel Judge Lorish also wrote that unnecessarily prolonging litigation was a relevant factor for a trial court to consider in determining an award of attorney fees where it causes incurring of additional fees. Finally, the panel noted that Husband's argument that the trial court could not award fees in a no-fault divorce was without merit based on well-established precedent.

Finally, Wife was also awarded appellate attorney fees based on the frivolous nature of Husband's appeal and the matter was remanded to the Circuit Court for determination of those fees.

B. Equitable Distribution

i. Jody Bart Randolph v. Kerry Ann Sheehy, Court of Appeals, 2023 0277221 (January 10, 2023) [Military Retirement and Disability, Contempt]

Judgment reversed and vacated in part where trial court lacked the authority to order appellant to revoke the Combat Related Special Compensation election after his retirement from the military; portion of judgment related to attorney's fee is remanded for reconsideration.

The parties' property settlement agreement was ratified by a final divorce decree. It provided in relevant part that Wife was to receive 50% of the marital share of Husband's disposable military retired pay. It also prohibited Husband from taking any action to reduce the amount of Wife's share, including any election to receive disability pay instead of retired pay, and required him to indemnify Wife if any action he took reduced her share. The agreement further provided that the losing party in any court proceeding to enforce or prevent breach of the agreement would be responsible for all fees, costs, and expenses of the other party.

Husband retired two years later and applied for disability pay as well as Combat-Related Special Compensation ("CRSC"). This reduced his disposable military retired pay and significantly decreased the amount that Wife received. Wife petitioned for a Rule to Show Cause and requested her attorney fees. At the initial hearing evidence was presented showing the election Husband had made and its impact on what Wife received. Husband paid the current arrearage for Wife's share of the retired pay prior to the next hearing and argued that he should not be found in contempt because he was in compliance with the indemnification provision (and had even paid Wife's attorney's fees). The Circuit Court took the matter under advisement and ordered Husband to ascertain if he could revoke his elections so that Wife would receive her full share of the retired pay. The Circuit Court also awarded Wife additional attorney's fees.

At the following hearings, Husband explained that he had set up an allotment to reimburse Wife for the shortfall she was owed under the agreement's indemnification provisions, and Wife agreed that this had covered what she was owed. The Court nonetheless awarded Wife additional attorney's fees payable by Husband and ordered Husband to revoke his CRSC pay election. Husband effectively revoked the CRSC

election prior to the final hearing, and Husband's counsel highlighted the substantial lifetime tax ramifications Husband faced as a result. The Court dismissed the show cause petition but still ordered that Husband revoke the CRSC pay election (which he already had) and ordered Husband to pay Wife still more attorney fees. Husband appealed.

The Court of Appeals discussed its prior decision of *Yourko v. Yourko*, 74 Va. App. 80 (2021), affirming again that a state court cannot require a servicemember to "reimburse" or "indemnify" their spouse for retired pay waived or diminished to receive disability pay (but see the Virginia Supreme Court reversal of the Court of Appeals *Yourko* opinion, *supra*, which was issued after this opinion). The Court of Appeals went on to discuss CRSC, which is disability pay with different dynamics, specifically that it is paid as additional non-taxable "special compensation" income but still replaces a portion of retired pay and is not itself retired pay. The Court of Appeals noted that an argument could be made that the Circuit Court had no authority to issue the initial final decree which included the indemnification provisions, or that the contractual provisions were distinct from *Yourko*, but the parties in this case were not challenging the original final decree.

In an opinion authored by Judge Lorish, the Court of Appeals held that because federal law preempts a retired veteran to compensate a former spouse for waived retired pay, it also preempts a state court from ordering a retired veteran to give up compensation to which he is statutorily entitled. The Circuit Court therefore lacked the authority to order Husband to waive his CRSC compensation and therefore The Circuit Court Order containing that requirement was vacated.

As to attorney's fees, the Court of Appeals held that because Husband was not found in contempt, and the Order requiring him to revoke his CRSC was vacated, he was not the "losing party" per the terms of the parties' agreement. He was, however, responsible for failing to indemnify Wife pursuant to the terms of their Agreement prior to the first hearing. The fee order was likewise vacated, and the matter was remanded to the Circuit Court for a new award of fees related only to the initial proceedings and first hearing.

ii. Yourko v. Yourko, Supreme Court, 2023 220039 (March 30, 2023) [Military Retirement and Disability]

The Virginia Supreme Court reversed the Court of Appeals by holding that a husband and wife are not prohibited by federal statute and caselaw from entering into an agreement to provide a set level of payments, the amount of which is determined by considering disability benefits as well as retirement benefits, and courts may uphold and enforce provisions of such agreements included to ensure that payments are maintained as intended by the parties.

Military retirees who are eligible for Department of Defense retired pay may also be eligible for VA disability pay. When a retiree elects to receive disability pay, he/she is required to waive a portion of their retirement pay, dollar for dollar, by the amount of their VA disability pay. (There are advantages, including tax benefits, that make election of disability pay and a resulting waiver of retirement pay attractive.)

The history of applying this "disability waiver" in divorce law was discussed by the Court of Appeals in the original *Yourko* case (74 Va. App. 80 (2021)) as well as by the Supreme Court of Virginia in this case. In 1981, the U.S. Supreme Court ruled in *McCarty v. McCarty*, 453 U.S. 210, that Congress did not intend to permit state courts to divide military retirement pay as part of divorce proceedings. In response, Congress enacted the Uniformed Services Former Spouses' Protection Act ("USFSPA"), 10 U.S.C. § 1408, which permits division of "disposable retired pay." In 1989, *Mansell v. Mansell*, 490 U.S. 581, 585, was decided and it held that the definition of "disposable retired pay" in § 1408(a)(4)(A) specifically excludes disability pay, therefore state courts could not treat military retired disability pay as divisible property in divorce.

In response to this, certain state courts required military retiree spouses to reimburse or indemnify their former spouse for what their former spouses would have received as a share of total retirement if not for the retiree's waiver for disability pay that could then not be divided. The U.S. Supreme Court rejected this approach in *Howell v. Howell*, 581 U.S. 214 (2017), holding that a court's requiring indemnification for the reduction in retirement pay caused by waiver due to disability was a semantic difference and an impermissible division of disability pay.

In the present case, Husband and Wife entered into an agreement in their divorce regarding Husband's military retired pay. This agreement, which was memorialized in an Order that reflected that it was based upon an agreement between the parties, calculated Wife's share of military retired pay and required Husband to indemnify Wife if she were to receive less than the monthly amount calculated by the parties by paying her the difference directly. After entry of the Order the Defense Finance Accounting Service ("DFAS") calculated Wife's share, due to Husband's waiver for disability pay, to be significantly less than what the parties had contemplated.

Husband reinstated the case in the Circuit Court and moved to amend the orders related to retired pay, arguing that the parties had erred in their calculation and that the indemnification provisions were void as contrary to federal law. The Circuit Court dismissed Husband's motion, finding that the Agreed Order was final, there were no clerical errors, and there was no mutual mistake of fact. Husband appealed to the Court of Appeals, which agreed with the Circuit Court as to the finality of the Order and lack of clerical errors/mistake of fact. However, relying on *Howell*, the Court of Appeals held that the indemnification provision was void *ab initio* as federal law deprived the court of the power to make such an order. Wife appealed the Court of Appeals holding.

Writing for the Virginia Supreme Court, Justice Powell held that while the U.S. Supreme Court in *Howell* prohibited state courts from requiring a party to indemnify a former spouse for division of a lower amount of retired pay due to a disability waiver, it had never addressed a situation where the state court indemnification order was by agreement. The agreement between the parties was a contract, which the parties merely memorialized (per their agreement) into a court order.

As the agreement placed no limitation on how the veteran himself or herself could use retired or disability pay once received, and since the payment of disability pay was made directly to the veteran, he wasn't expressly required to use his disability pay to indemnify Wife but was simply required to pay from any funds he had. Additionally, the record indicated that Husband's income far exceeded the amount necessary to indemnify Wife even excluding the entirety of his military retirement pay.

In summary, the Virginia Supreme Court held that the Court of Appeals erred when it held that *Howell* was implicated in cases where the parties contractually agreed to divide military retired benefits with an indemnification provision, and the Court of Appeals had also erred in overruling its own prior related cases. The Virginia Supreme Court reinstated the original Circuit Court ruling dismissing Husband's motion.

C. Support

None.

D. Custody and Visitation

i. Regginald Moore and Valerie Moore v. Dominique Joe, Court of Appeals, 2023 0098221 (January 24, 2023) [Third Party Custody]

Judgment affirmed where any error in excluding the de bene esse deposition of a licensed clinical psychologist was harmless; no error in trial court's denial of the motion to strike because the evidence showed no actual harm to the child.

M.J., an infant, was abandoned by Mother at a shelter for five days. On that basis DSS removed her from her mother's care and placed her with the Moores as Foster Parents. Subsequent JDR proceedings awarded DSS custody of the child with a goal of "return home." That goal remained consistent throughout the JDR proceedings. Mother made contact with DSS a few months later, and ultimately followed recommendations, got a job and an appropriate living situation. She also had increased visitation with M.J. (even when limited by the COVID-19 pandemic). The child began a trial home placement with Mother about twenty-one months after she was first removed. The Moores then filed petitions for custody and visitation of the child in the JDR Court. Upon DSS recommendation, JDR returned M.J. to her mother and dismissed the Moores' petitions, whereupon they appealed to the Circuit Court. Several months later Mother was granted full custody by JDR.

After multiple continuances of the Moores' appeal, their petitions went to trial in the Circuit Court almost one year after the child had been returned

to Mother's home. At the trial, the Moores attempted to introduce a *de bene esse* deposition of a psychologist who had met with Mother nearly two years earlier as part of the permanency planning process. In that deposition the psychologist opined that she had been concerned about Mother's ability to parent the child, her mental health history, and her instability. In Circuit Court the psychologist made no representations about Mother's current state or ability to parent as of the time of trial. The Circuit Court ultimately accepted the Moores' proffers about the contents of the deposition but excluded introduction of the entire transcript and associated documents.

In addition to hearing from the parties, the Circuit Court also received photographs of the child's home and daycare with Mother, which were bright, clean, and appropriate. The Circuit Court ultimately granted Mother's Motion to Strike, finding that the Moores had made "no showing of actual harm." The Moores appealed.

The Court of Appeals panel held that even if excluding the deposition had been error it was harmless error as it did not show current actual harm to the child and could not have affected the outcome of the Motion to Strike. The evidence presented, even in the light most favorable to the Moores, had not met the standard for awarding custody and visitation to a third party. In custody disputes between third parties and parents, the law presumes that the child's best interests will be served when custody is placed with the parent. To rebut this presumption, the Moores were required to establish by clear and convincing evidence at least one of 5 conditions: (1) that the parent is unfit; (2) there has been a previous order of divestiture; (3) the parent voluntarily relinquished custody; (4) the parent abandoned the child; or, (5) special facts and circumstances established an extraordinary reason for taking a child from its parent.

Bolstering this is the established Virginia standard that to award visitation to a non-parent over the parent's objection the non-parent must show actual harm to the child's health or welfare. [See *Williams v. Williams*, 24 Va. App. 778, 782 (1997), aff'd as modified, 256 Va. 19 (1998)]. Writing for the panel Judge Ortiz reasoned that visitation is a narrower issue within the custodial liberty interest of parents and as visitation cannot be ordered without showing actual harm to the minor child

if there is no visitation, it follows that custody also cannot be ordered without proving actual harm. The Moores' evidence regarding Mothers' mental health and instability was mere speculation as they could not identify anything about her condition, and the child's condition at the time of trial. The Circuit Court's ruling was therefore affirmed.

E. Parental Rights

i. Tina Dione Woodson v. Commonwealth of Virginia, Virginia Court of Appeals, 2022 0610212 (May 3, 2022) [Corporal Punishment]

Trial court erred in finding evidence was sufficient to support assault and battery charges where, given the parental privilege to use reasonable corporal punishment, the evidence did not prove appellant's actions were excessive.

Twelve-year-old twins used a cell phone in violation of Mother's rules regarding same and Mother disciplined them with a belt. The children were small for their ages and later testified to being spanked on their bottom and legs with the belt. Son approached a school resource officer later that day and said he did not feel safe going home. Daughter was questioned and confirmed the same, although neither child identified Mother as the specific reason, they were afraid (and Son also relayed a different incident with the children's father). The school resource officer and investigator observed bruises and marks on the twins, but there was some confusion over the source of the marks. Family services specialists from DSS testified that they observed some discoloration, but not linear marks or bruising. The Circuit Court judge found Mother guilty of assault and battery.

The law recognizes a "parental privilege" excusing what would ordinarily be battery where it is a parent disciplining a child with corporal punishment, provided that the discipline is reasonable and not excessive. [See *Carpenter v. Commonwealth*, 186 Va. 851, 861 (1947)]. Factors for considering whether punishment was moderate or excessive include the emotional state of the parent; the age, size, and conduct of the child; the nature of the misconduct by the child; the nature of the instrument used; and the marks or wounds inflicted on the child's body. All prior caselaw has dealt with cases where the parent inflicted significant physical harm on the

child; where that threshold is exceeded, the inquiry is typically over, and the other factors need not be considered.

In this case, the Court of Appeals found there was no significant harm, so the factors applied. There was no evidence that Mother acted in an angry, rageful, or degrading way. Mother used the soft end of the belt, not the buckle. Mother was of average size and build. While both twins expressed fear of returning home, there was insufficient evidence that this was linked specifically to Mother or to this specific incident. The trial judge seemed to rely mainly on the nature of the misconduct as relatively minor, but disagreement with Mother's decision to use corporal punishment, combined with the rest of the evidence, fell short of demonstrating that the punishment was excessive. The Court of Appeals reversed and dismissed the conviction.

ii. Jordan Heath Joyce v. Botetourt County Department of Social Services, Virginia Court of Appeals, 2022 0736223 (November 9, 2022) [Termination of Parental Rights]

Trial court erred in terminating appellant's parental rights pursuant to Code § 16.1-283(C)(2) where the appellee provided no plan or services to help appellant parent his child.

In 2018, the JDR Court entered a two-year protective order, prohibiting Father from having contact with his two children except at a supervised visitation location. Father sought dissolution of the protective order in 2019 and was denied. Also in 2019, DSS discovered that the children were living in "unfit" conditions with Mother after which Mother signed an entrustment agreement. When two months later Mother had not remedied the living conditions, the JDR court approved DSS's petition to place the children in foster care with a permanent goal of returning the children to Mother.

At the outset of the children's time in foster care, the JDR Court ordered that Father could have visitation with the youngest child (and subject of this appeal), NJ, at DSS's discretion. DSS offered no visitation or other services to Father, and their foster care plans in 2019 and 2020 noted that there were no visits due to NJ's diagnosis of autism and Father's

"health situation." DSS never investigated Father's "health situation" and later testified that they noted Father shaking and unable to speak in Court hearings. Father suffers from early-stage Parkinson's disease.

Mother did not comply with services or remedy the situations that resulted in the children's removal, and in 2021 DSS petitioned the JDR Court for termination of both Mother's and Father's parental rights. The basis for Father's termination of rights was his lack of contact with NJ and his Parkinson's disease. The JDR Court terminated both parents' parental rights and Father appealed. At the appeal hearing in February 2022, the Circuit Court heard testimony that NJ had significantly improved in foster care, that DSS had never offered services to Father or assisted him in contact with NJ, and that Father had called DSS seven times asking to visit with NJ and had called the supervised visitation location about visits (which had referred him to DSS). DSS had never offered Father visitation with NJ even after his protective order expired in 2020. The Circuit Court nonetheless noted that it felt Father could have done more and that he had previously been found "a danger" to the children and terminated Father's parental rights. Father appealed.

The Court of Appeals reversed. Writing for the panel Judge Humphreys agreed that the evidence did not support the Circuit Court's finding that DSS had made reasonable and appropriate efforts to remedy the conditions that led to or required the continuation of NJ's placement in foster care as required by Code § 16.1-283(C)(2) (the statute under which his rights were terminated). It was undisputed that DSS had offered no services or visits to Father at all. While there was a protective order in place for NJ's first year in foster care, even the protective order permitted supervised visits, and it expired over a year prior to termination of Father's rights. Father was not unwilling and disinterested, had appeared at court hearings, and had made multiple inquiries about visitation.

The matter was remanded for further proceedings consistent with its opinion, and the Court of Appeals noted in a footnote that the Circuit Court may not use, on remand, the length of separation between Father and NJ while the appeal was pending "to justify any diminution in father's parental rights."

iii. Shiye Qiu v. Chaoyu Huang, Anna Ouspenskaya and Arlene Starace, Virginia Court of Appeals, 2023 0459224 (April 18, 2023) [Tortious Interference with Parental Rights]

Trial court did not error by sustaining appellees' joint demurrer and dismissing appellant's claims of tortious interference with parental rights and civil conspiracy against the three appellees, as well as his claim of fraud against one of the appellees; no abuse of discretion by court in staying the proceedings, including discovery, prior to ruling on the demurrer.

Father and Mother separated when their child was eight years old and shortly thereafter Mother commenced divorce and custody proceedings. In 2016, while those proceedings were ongoing, Father filed a *pro se* tort complaint alleging that two of Mother's acquaintances and one of her attorneys were tortiously involved in the custody dispute. (Father's suit also named a fourth defendant who is not at issue on appeal.) Father did not serve the complaint until after the final divorce decree in their family law case was entered. That decree granted the parties joint legal custody of the child and granted Mother primary physical custody.

There were a series of demurrers and amendments of the complaint by Father. Father's Fifth Amended Complaint was more than fifty pages long and contained nine counts. The counts at issue on appeal were as follows:

1. Counts one, two, and three alleged that the Mother's friends and her attorney had tortiously interfered with Father's parental and custodial rights by encouraging and coordinating her to leaving causing a diminution in his contact with the child and that they also played a role in "alienating" the child from Father. He did not allege that any defendant physically took the child.
2. Count four alleged that the defendant, who was Mother's attorney, had committed fraud by making false allegations that Father abused the child and committed acts constituting cruelty against his wife, and that his wife's relationship with another man was not romantic. He further alleged that these actions harmed his parental and custodial rights.

3. Counts eight and nine alleged that the defendants were involved in two civil conspiracies, one to commit tortious interference and fraud, and another different but similar civil conspiracy.

Father sought damages of $2 million compensatory damages and $1 million punitive damages for each count.

Trial was originally scheduled for July 2020. In February 2020, on joint motion the trial court granted a stay pending resolution by the Supreme Court of Virginia of *Padula-Wilson v. Landry*, 298 Va. 565 (2020), a case which addressed similar claims. A decision was issued in *Padula-Wilson* in May 2020, and the stay was lifted

On July 31, 2020, the Court sustained the joint demurrers in all relevant respects, dismissing all the counts but permitting amendment as to one count against the fourth defendant not addressed on appeal. After subsequent proceedings Father reached a settlement with that fourth defendant and the action was dismissed with prejudice. Father noted his appeal of the previously dismissed claims against these remaining three defendants.

The Court of Appeals panel opinion reviewed the law with regard to tortious interference with parental rights, which is in essence "depriving the complaining parent of his or her parental or custodial rights by preventing that parent from exercising some measure of control over the child's care, rearing, safety, well-being, etc." (Internal citations and quotations omitted.) This tort requires that four elements be proven: (1) a right to establish or maintain a parental or custodial relationship with the child; (2) an outside party's intentional interference with that right without that parent's consent; (3) resulting harm to the parental or custodial relationship; and (4) damages.

Chief Judge Decker authored the opinion and noted that adoption is the only context in which the Virginia Supreme Court has recognized tortious interference with parental rights. Furthermore, Father's allegations that third parties took actions to convince his daughter that he had abused her in order to deprive him of her love and companionship do not implicate the tort of interference with parental rights but only of alienation of affection, a cause of action which was abolished in Virginia in 1977.

The Court of Appeals also reviewed prior cases on this type of claim concluding that recovery is barred if the person being sued has "substantially equal rights" to a parental or custodial relationship with the child, therefore only a parent whose parental rights have been terminated is subject to suit by the other parent for tortious interference with parental rights. The panel also held that as suit cannot be brought directly against a parent who retains parental and custodial rights over a child, it must not be allowed to be brought against that parent indirectly. Chief Judge Decker opined that this is what Father was doing, by suing third parties who he alleged merely attempted to impact Mother's decision-making or participated in it. The remedy for a dispute between the parents was pursuant to the custody statutory scheme, namely by a request to modify custody or to hold the other party in contempt for violating the custody order. Third-party action directed at depriving one parent of his parental and custodial rights via the other parent is indistinguishable, as it can also be addressed within the framework of custody law. As in *Padula-Wilson*, Father had due process in the family law case, where he could have explored his claims of alienation, fabrication, and hiding evidence through discovery, cross-examination, and presentation of his own evidence.

The Court of Appeals further affirmed the dismissal of the other claims, and affirmed the stay of proceedings, on bases not related to family law and so not included here.

II. Federal Case Law

A. None

III. Statutory Update

Bills that Passed

Summary: Mainly what passed this year consisted of clarifications. The biggest change for our purposes is a court can now apportion certain expenses incurred prior to a child's birth as part of child support if the petition is filed within 6 months of a live birth.

HB 1385: *Divorce; affidavit submitted as evidence, minor children of the parties*
Clarifies that an affidavit submitted as evidence in support of a divorce shall state whether there were minor children either born of the parties, born of either party and adopted by the other, or adopted by the parties. Current law provides that such an affidavit shall state whether there were children born or adopted of the marriage.
Status: Passed both House and Senate unanimously, Governor approved

HB 1581: *Child custody, etc.; educational seminars approved by Office of Ex. Sec. of Supreme Court*
Provides that when the parties to any petition where a child whose custody, visitation, or support is contested are required to show proof that they have attended an educational seminar or other like program conducted by a qualified person or organization, such educational seminar or other like program shall be one that has been approved by the Office of the Executive Secretary of the Supreme Court of Virginia. Current law provides that such educational seminars or other like programs are approved by the court. This bill is a recommendation of the Judicial Council of Virginia and the Committee on District Courts
Status: Passed both House and Senate unanimously, Governor approved

HB 1961: *Family abuse protective orders; relief available, password to electronic device*
Provides that as a condition to be imposed by the court on the respondent, a petitioner with a protective order issued in a case that alleges family abuse and, where appropriate, any other family or household member must be given the relevant password when being granted exclusive use and possession of a cellular telephone or other electronic device. The bill further provides that the court may enjoin the respondent from using a cellular telephone or other electronic device to surveille the petitioner.

Status: Passed House almost unanimously and Senate unanimously, Governor approved

HB 2071: *Persons other than ministers who may perform rites of marriage; issuance of order, etc.*
Provides that the clerk may waive the $500 bond required to be entered into prior to celebrating the rites of marriage if the person qualifies for in forma pauperis status.
Status: Passed both House and Senate with some back-and-forth, Governor approved

HB 2290/SB 1314: *Judgment or child support order; pregnancy and delivery expenses*
Provides that in the event that the initial petition for the establishment of parentage is commenced within six months of the live birth of a child, the judgment or order shall, except for good cause shown or as otherwise agreed to by the parties, apportion between the legal parents, in proportion to the legal parents' gross incomes, as used for calculating the monthly child support obligation, (i) the mother's unreimbursed pregnancy and delivery expenses and (ii) those reasonable expenses incurred by either parent for the benefit of the child prior to the birth of the child.
Status: Passed both House and Senate with some back-and-forth, Governor approved

SB 873: *Family abuse protective orders; filing a petition on behalf of minors*
Provides that for purposes of filing a petition for preliminary protective order in a family abuse situation, the attorney for the Commonwealth or a law-enforcement officer may file a petition on behalf of a minor as his next friend if an emergency protective order was previously issued for the protection of such minor and such petition is filed before the emergency protective order expires or within 24 hours of the expiration of such emergency protective order.
Status: Passed both House and Senate unanimously, Governor approved

SB 1443: *Parents Advocacy Commission; recommendations for establishing, report*
Directs the Office of the Children's Ombudsman to convene a work group to study and make recommendations for the establishment of the Parents Advocacy Commission. The bill directs the work group to report such

recommendations to the Chairmen of the Senate Committee on the Judiciary and the House Committee for Courts of Justice by November 1, 2023.
Status: Passed both House and Senate unanimously, Governor approved

Bills that Failed to Pass

Summary: More bills failed to pass than passed this year, and those that failed ran the gamut, including more attempts to codify same-sex marriage, provisions related to parental rights, and new tax credits (or investigation of new tax credits).

HB 1549: *Wrongful death; death of parent or guardian of a child resulting from driving under the influence*
Provides that in any action for death by wrongful act where the defendant, as a result of driving a motor vehicle or operating a watercraft under the influence, unintentionally caused the death of another person who was the parent or legal guardian of a child, the person who has custody of such child may petition the court to order that the defendant pay child support.
Status: Passed House, left in Senate committee

HB 1720: *Divorce; cruelty, reasonable apprehension of bodily hurt, or willful desertion or abandonment*
Eliminates the one-year waiting period for being decreed a divorce on the grounds of cruelty, reasonable apprehension of bodily hurt, or willful desertion or abandonment by either party. The bill also repeals the provision allowing for a divorce from bed and board on the grounds of cruelty, reasonable apprehension of bodily hurt, or willful desertion or abandonment. The provisions of the bill apply to suits for divorce filed on or after July 1, 2023.
Status: Left in House committee

HB 2079: *Assault and battery against a family or household member; prior conviction, second offense sentence*
Provides that upon a conviction for assault and battery against a family or household member where it is alleged in the warrant, petition, information, or indictment on which a person is convicted that such person has been previously convicted of an offense that occurred within a period of 10 years

of the instant offense against a family or household member of (i) assault and battery against a family or household member, (ii) malicious wounding or unlawful wounding, (iii) aggravated malicious wounding, (iv) malicious bodily injury by means of a substance, (v) strangulation, or (vi) an offense under the law of any other jurisdiction that has the same elements of any of the offenses listed in clauses (i) through (v), such person is guilty of a Class 1 misdemeanor, and the sentence of such person shall include a mandatory minimum term of confinement of 30 days.
Status: House left in committee

HB 2091: *Parental access to minor's medical records; consent by certain minors to treatment*
Adds an exception to the right of parental access to a minor child's health records if the furnishing to or review by the requesting parent of such health records would be reasonably likely deter the minor from seeking care. Under the bill, a minor 16 years of age or older who is determined by a health care provider to be mature and capable of giving informed consent shall be deemed an adult for the purpose of giving consent to treatment of a mental or emotional disorder. The bill provides that the capacity of a minor to consent to treatment of a mental or emotional disorder does not include the capacity to (i) refuse treatment for a mental or emotional disorder for which a parent, guardian, or custodian of the minor has given consent or (ii) if the minor is under 16 years of age, consent to the use of prescription medications to treat a mental or emotional disorder.
Status: House left in committee

HB 2174: *Marriage; lawful regardless of sex of parties*
Clarifies that a marriage between two parties is lawful regardless of the sex or gender of such parties, provided that such marriage is not otherwise prohibited by the laws of the Commonwealth. The bill also provides that religious organizations or members of the clergy acting in their religious capacity shall have the right to refuse to perform any marriage.
Status: House left in committee

HB 2357: *Surrogacy; relinquishment of parental rights*
Provides that, at any time prior to the birth of a child, a surrogate may relinquish her parental rights to an intended parent, if at least one intended parent is the genetic parent of the child or the embryo was subject to the legal or contractual custody of such intended parent, by signing a surrogate

consent and report form naming the intended parent as the parent of the child. Under current law, the surrogate may relinquish such parental rights to the intended parent upon expiration of three days following the birth of the child.
Status: Left in House committee

HB 2259: *Paternity; genetic tests to determine parentage, relief from paternity.*
Requires the court to set aside a final judgment, court order, administrative order, obligation to pay child support, or any legal determination of paternity if a scientifically reliable genetic test establishes the exclusion of the individual named as a father in the legal determination of paternity, except for good cause shown that such relief is not in the best interest of the child. Under current law, such a set aside is discretionary. The bill further requires that an alleged father of a child be informed of his option to request the administering of a scientifically reliable genetic test to determine paternity prior to being entered as the father on a birth certificate.
Status: Passed House (narrowly), Senate left in committee

HJ 460: *Constitutional amendment; repeal of same-sex marriage prohibition*
Repeals the constitutional provision defining marriage as only a union between one man and one woman as well as the related provisions that are no longer valid as a result of the United States Supreme Court decision in *Obergefell v. Hodges*, 576 U.S. 644 (2015).
Status: House left in committee

HJ 505: *Constitutional amendment; rights of parents*
Provides that parents have the right to direct the upbringing, education, and care of their children and that the Commonwealth shall not infringe these rights without demonstrating that its governmental interest is of the highest order and not otherwise served.
Status: House left in committee

SB 1096: *Marriage; lawful regardless of sex of parties*
Clarifies that a marriage between two parties is lawful regardless of the sex of such parties, provided that such marriage is not otherwise prohibited by the laws of the Commonwealth. The bill also provides that religious

organizations or members of the clergy acting in their religious capacity shall have the right to refuse to perform any marriage.
Status: Passed Senate by about 2/3, failed to pass House

SB 1214: *Child abuse and neglect; custody and visitation, possession or consumption of substances*
Provides that a child shall not be considered an abused or neglected child, and no person shall be denied custody or visitation of a child, based solely on the fact that the child's parent or other person responsible for his care, or the person petitioning for custody or visitation of the child, possessed or consumed marijuana in accordance with applicable law. The bill directs the Board of Social Services to amend its regulations, guidance documents, and other instructional materials to ensure that such regulations, documents, and materials comply with, and that investigations and family assessments are conducted by local departments of social services in accordance with, the provisions of the bill.
Status: Passed Senate, House left in committee

SB 1324: *State-level economic security payment grant program/tax credits; analyzing impact on families.*
Directs the Joint Subcommittee on Tax Policy to review and analyze options for a state-level grant program, tax credit, or refund for families, including the expansion of the earned income tax credit, the creation of a state-level child tax credit or child and dependent care tax credit, and the creation of a grant program to provide grants to local social services departments for the provision of monthly economic security payments to families with children.
Status: Passed Senate unanimously, House left in committee

SB 1529: *Right to life; tax credit for each birth of a dependent member of a taxpayer's household*
Allows a refundable income tax credit of $250 for each birth of a dependent member of a taxpayer's household that occurs in taxable years 2023 through 2027. The credit is only available to a family with an annual household income that is not in excess of 400 percent of the current poverty guidelines and is subject to an aggregate cap of $25 million per taxable year. Credits shall be allocated on a pro rata basis if applications exceed such aggregate cap.
Status: Senate left in committee